Proceedings of the Government of His Highness the Maharaja of Mysore, Muzrai, dated 20th May 1904.

Appeal No. 91 of 1903-04.

Appellant.	*Versus*	*Respondents.*
Seshagiriachar (dead), his widow Pillubayi *alias* Ramabayi appears and is substituted.		1. Gothubayi 2. Yesvanta Rao, minors by guardian Bhima Rao.

Subject.

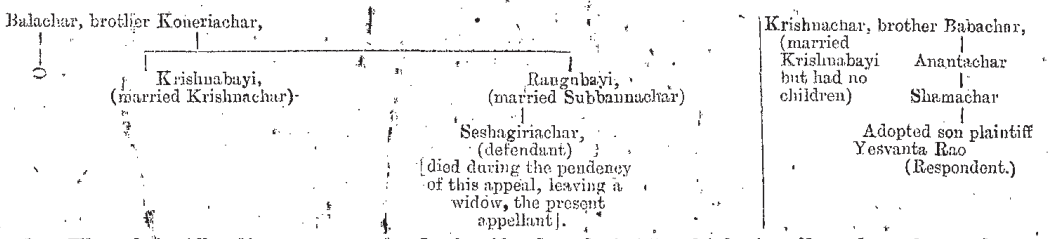
Second appeal against the decree of the Muzrai Assistant Commissioner, Mysore District, decreeing to the respondent, the puja hak of the Anjaneyaswami temple at Hanasoge, Yedatore Taluk, with the inam land attached to it.

The facts of the case appear sufficiently from the following :—

Decision.

This is a dispute in connection with the puja hak of the Anjaneyaswami temple at Hanasoge, with the Inam land attached to it. The hak in question originally belonged to one Balachar, who died some 60 or 70 years ago. He had a brother by name Koneriachar, who predeceased him leaving behind him two minor daughters named Krishnabayi and Rangubayi. Balachar had no children. He brought up his orphan nieces and married them to one Krishnachar and Subbannachar, respectively. Both the parties to this suit claim under a gift from Balachar. They are however at variance as to the nature of the gift, one side, *viz.*, the plaintiff, alleging that the gift was in favor of Krishnachar alone and for his own benefit, and the other, *viz.*, the defendant, contending that it was in favor of both Krishnachar and Subbannachar and not on their own account but on behalf of their wives, the nieces of the donor. The Amildar and the Assistant Commissioner accepted the former version and rejected the latter. In the result the suit was allowed. Hence this appeal.

2. For a proper understanding and appreciation of the case, the relationship between the parties is shown in the geneological tree below :—


Balachar, brother Koneriachar,
Krishnabayi, (married Krishnachar)
Rangubayi, (married Subbannachar)
Seshagiriachar, (defendant) [died during the pendency of this appeal, leaving a widow, the present appellant].
Krishnachar, brother Babachar, (married Krishnabayi but had no children)
Anantachar
Shamachar
Adopted son plaintiff Yesvanta Rao (Respondent.)

3. The plaintiff relies upon a deed of gift dated 1835 which is alleged to have been suppressed by the other side and of which therefore he produces a copy. The genuineness of this document is impugned and has not been satisfactorily established. Reliance is placed upon the order of Government in Appeal No. 188 of 1892-93 in which a reference has been made to a gift in favor of Krishnachar, but it appears clear that reference cannot have the force of a finding, occurring as it does, not in the body of the decision, but in the resume of the facts of the case. It cannot moreover affect the defendant who was not a party to that proceeding. Certain statements made on diverse occasions by Krishnabayi are next relied on, but the Government are of opinion that there is nothing in those statements to justify the contention based upon them. They do not necessarily show that the gift was one made either in Krishnachar's *sole name* or for his *own benefit*. The defendant cannot moreover be held bound by them or by the karar executed by Krishnabayi to Anantachar in 1879. The conduct of the defendant's husband Seshagiriachar is said to militate against the defendants present ascertion, but here too Government are unable to agree with the authorities below. Krishnabayi undoubtedly had an interest in the subject-matter of this litigation and the fact that she was assisted by Seshagiriachar in the conduct of certain proceedings connected with the assertion of that interest and in the performance of puja in the temple, does not show that the latter had himself no interest in the hak or that he was estopped from asserting it. Lastly, certain Jari Inamti accounts have been relied upon as evidence of Krishnachar's exclusive ownership. In the view, however, that Government have taken of the case, these accounts cannot be accepted as conclusive evidence, contradicted as they are by an earlier account the authenticity of which they see no reason to question.

4. And now coming to the case set up by the defendant, Government find that in addition to the evidence which will be referred to later on, the balance of probabilities is quite in its favor. Balachar had no interest in Krishnachar except as the husband of one of his nieces, and he was not therefore likely to have given away his property to him to the detriment not only of that niece, but also of the other niece. The disposition evidenced by the deed of gift relied upon by the defendant is a perfectly natural one. Balachar was anxious that the hak should not pass out of the family and he accordingly gave it to both these girls at the time of their marriage with the condition attached that, in the event of one of them dying without

male issue her half share should pass to the other. As regards the evidence, Government are satisfied that the document comes from proper custody and that it has all the appearance of a genuine instrument. Being a very old document, the law presumes its genuineness. It is engrossed upon a stamp paper expressly purchased for the purpose. Its existence was referred to in a deposition given by Krishnabayi so far back as 5th February 1889. Again a plaint filed by herself and Seshagiriachar on 8th September 1891 makes mention of it. The Assistant Commissioner is in error in suspecting that it must have come into existence in 1893 when the case between Krishnabayi and Shamachar was before Government. The gift in favor of both the nieces represented by their husbands has been expressly mentioned in the marginal note to the Jari Inamti account for the year 1831. There is nothing suspicious about this note. It is in the same handwriting as the rest of the account and its age and appearance must be given due weight. The only thing that could be said against it is that the copy maintained in the Huzur records does not contain a similar note. Government do not however attach much importance to this circumstance, inasmuch as the last mentioned paper does not profess to be a *verbatim* copy of the original. It is shorter and less descriptive, and this is not the only *shara* which is found in the original but is absent in the copy. It is noteworthy that even the admitted gift of certain Bhatamanyam lands to Subbannachar in 1831 which is referred to in the original by a marginal *shara*, has not found a corresponding place in the said copy, or even in the copy for the two subsequent years.

5. The conduct of Seshagiriachar throughout seems to show that he always regarded himself as the owner of a half share in the hak in question. Neither the possession of Krishnachar who died in 1876 nor that of Krishnabayi who died in 1896 has been shown to have been adverse to Rangubayi or her son Seshagiriachar.

6. Under these circumstances, Government have no hesitation in coming to the conclusion that the plaintiff has not substantiated his case while the defendant has.

7. There remains the question whether in spite of the above finding the suit is entitled to succeed. Government are of opinion that it is not. The plaintiff can only claim as a lineal descendant of Krishnachar. But that individual had no title of his own to the hak, having merely been his wife's agent in regard to her half share which, on the death of that woman without male issue, passed under the terms of the gift to her sister's son the defendant's husband Seshagiriachar, who already owned the other half; and on the latter's demise the whole descended to the defendant under the law succession. The law recognizes gifts of this kind, *i. e.*, gifts accompanied by a condition that the property should pass to another in a particular event, *vide* Mayne's Hindu Law, 5th Edition, para 350. That being so, it follows that the defendant's title is unassailable and that the plaintiff's suit should be thrown out.

8. The appeal is accordingly allowed and the suit dismissed.

No. 3572—MUZ. F. 5-99, DATED BANGALORE, 20TH MAY 1904.

Copy of the above is forwarded to the Deputy Commissioner, Mysore District, together with the records received with his letters Nos. 309 and 101, dated the 30th May and the 31st October 1903.

M. SHAMA RAO,
Offg. Secy., Muzrai Dept.